Supreme Court of the United States

OCTOBER TERM, 1920.

No. ~~917~~ 990

ANNA LANG, as Administratrix of the Goods, Chattels and Credits of GEORGE H. LANG, Deceased,
Petitioner,
vs.
NEW YORK CENTRAL RAILROAD COMPANY,
Respondent.

PETITION AND MOTION, WITH NOTICE, FOR WRIT OF CERTIORARI TO THE Supreme COURT [redacted] OF THE STATE OF NEW YORK and BRIEF IN SUPPORT THEREOF.

Hamilton Ward,
Attorney for Petitioner.

SUPREME COURT OF THE
UNITED STATES.
TERM, 1920.

ANNA LANG, as Administratrix of the Goods, Chattels and Credits of OSCAR G. LANG, Deceased,
PETITIONER,
vs.
NEW YORK CENTRAL RAILROAD COMPANY,
RESPONDENT.

THE NEW YORK CENTRAL RAILROAD COMPANY, respondent, is hereby notified that Anna G. Lang, as administratrix, etc., petitioner, will on the 15 day of April, 1920, upon her petition and the entire record in the case, upon the opening of court on that day, or as soon thereafter as counsel can be heard, submit a motion, a copy of which and of the petition for writ of certiorari and brief in support thereof, is herewith delivered to you, to the Supreme Court of the United States in its Court Room at the Capitol in the City of Washington, D. C.

HAMILTON WARD,
Attorney for Petitioner.

SUPREME COURT OF THE
UNITED STATES.
TERM, 1920.

ANNA LANG, as Administratrix of the Goods, Chattels and Credits of OSCAR G. LANG, Deceased,
PETITIONER,
against
NEW YORK CENTRAL RAILROAD COMPANY,
RESPONDENT.

Now comes Anna Lang as Administratrix of the goods, chattels and credits of Oscar G. Lang, deceased, by Hamilton Ward her counsel, and moves this Honorable Court that it shall upon certiorari, or other proper process directed to the Honorable Justices of the Court of Appeals of the State of New York, require said court to certify to this court for its review and determination a certain cause in said Court of Appeals, lately pending wherein the petitioner, Anna Lang was plaintiff-respondent and New York Central Railroad Company was defendant-appellant, and to that end tenders herewith her petition and brief and a certified copy of the entire record in such cause in said Court of Appeals.

The court will enter my appearance as counsel for the petitioner.

HAMILTON WARD,
Counsel for the Petitioner,
Office and P. O. Address,
104-09 Erie Co. Bk. Bldg.,
Buffalo, N. Y.

SUPREME COURT OF THE
UNITED STATES.
TERM, 1920.

ANNA LANG, as Administratrix of the Goods, Chattels and Credits of OSCAR G. LANG, Deceased,
PETITIONER,

against

NEW YORK CENTRAL RAILROAD COMPANY,
RESPONDENT.

To the Honorable Supreme Court of the United States:

The petition of Anna Lang as Administratrix of the goods, chattels and credits of Oscar G. Lang, deceased, respectfully shows to this Honorable Court:

That this action was brought by Anna Lang as Administratrix of Oscar G. Lang, deceased, to recover damages against the defendant New York Central Railroad Company for causing the death of said Oscar G. Lang while in its employ.

This action was brought in the Supreme Court of the State of New York under the Federal Employers' Liability Act and the Federal Safety Appliance Act.

The trial resulted in a verdict of Eighteen thousand ($18,000) dollars and judgment was entered

in the Erie County Clerk's office in the State of New York for the sum of Eighteen thousand seventy dollars and eighty-three cents ($18,070.83) on the 13th day of June, 1918.

An appeal was taken from this judgment to the Appellate Division, Fourth Department, which court on March 5, 1918 affirmed the judgment of the lower court, Foote, J., dissenting.

From this judgment an appeal was then taken to the Court of Appeals which court on January 7, 1920, reversed the judgments of the Trial Court and Appellate Division and dismissed the complaint with costs on all ccunts.

Hiscock, C. J., Collin, Hogan and McLaughlin, J. J., concurred with Andrews who wrote opinion. Chase and Crane, J. J., dissenting.

The questions and propositions of law involved in this case are as follows:

I. The rule laid down by the Court of Appeals in the Lang case makes the test of liability whether or not the collision was proximately caused by a violation of the Safety Appliance Act, whereas, the true test, as laid down by the United States Supreme Court is whether or not the *injury* was proximately caused by a violation of the Safety Appliance Act.

II. The Court of Appeals erred in considering the collision as the test of liability, inasmuch as

the collision would have been the ordinary coupling contact, and harmless, but which became dangerous to life and limb because of the absence of the coupler and the violation of the Safety Appliance Act.

III. The Court of Appeals was in error in dismissing plaintiff's complaint, but should have directed a new trial.

At the close of the trial defendant's counsel moved for a direction of a verdict, but the Trial Court held that absolute liability had been established as a matter of law and the only question submitted to the jury was that of damages.

It is claimed by plaintiff that this action, having been brought under both the Employers' Liability Act and the Safety Appliance Act, even if no liability had been established under the Safety Appliance Act, then it was the duty of the Court of Appeals to direct a new trial in order that the plaintiff might have an opportunity to prove a cause of action under the Employers' Liability Act.

IV. A new trial ought to have been granted by the Court of Appeals in any event, as the question of proximate cause of the injury was one of fact for the jury.

V. Your petitioner further alleges that the present case is one in which it is proper for this

court to issue a writ of certiorari for the following reasons:

1. Because there is a conflict in this respect between the law as expounded by said Court of Appeals and the United States Supreme Court.

2. Because there is manifest confusion as to the interpretation of the Conarty, Layton and Gotschall cases. The Trial Court, four of the five Appellate Division judges and two of the Court of Appeals judges have held that this case comes within the rule laid down in the Layton and Gotschall cases. While one Appellate Division Judge and five Court of Appeals judges have held that it is governed by the rule laid down in the Conarty case, and said question is of sufficient general, national and material importance and interest as to make it necessary that it should be determined by the court of last resort.

3. Because the public interest requires the decision of this court upon the questions of law involved herein.

The highest court in the State of New York has seriously limited the application of the Safety Appliance Act which the Supreme Court of the United States has held time and time again imposed an absolute duty of liability. The fact that the Court of Appeals has written an opinion, which in due course will appear in the reports, will greatly tend to unsettle and confuse the law

which this court has settled in the Layton case, and will be productive of endless controversies and litigations whenever the Safety Appliance Act is sought to be invoked.

Your petitioner further shows that a final judgment has been rendered in this action by the highest Court of the State of New York in which a decision in this cause could be had, which judgment became final on the 7th day of January, 1920.

Your petitioner presents to this court as an exhibit to this petition a certified copy of the entire transcript of the record of this case, also a brief of her argument upon the questions of law involved.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may issue out of and under the seal of this court directed to the Court of Appeals of the State of New York, which has the custody of the record in this case commanding said court to certify and send to this court upon a day certain to be therein designated, a full transcript of the record of all the proceedings of the said Court of Appeals, in this case, entitled: "Anna Lang, as Administratrix of the goods, chattels and credits of Oscar G. Lang, deceased, against New York Central Railroad Company" to the end that said cause may be reviewed and determined by this court as required by law

and that your petitioner may have such other and further remedy in the premises as to this court may seem appropriate and that the judgment of said Court ~~of Appeals~~ may be reversed by this Honorable Court.

ANNA LANG, as Administratrix, etc.,
By HAMILTON WARD,
Her Attorney.

SUPREME COURT OF THE
UNITED STATES.

ANNA LANG, as Administratrix of the Goods, Chattels and Credits of OSCAR C. LANG, Deceased,
PETITIONER,
vs.
NEW YORK CENTRAL RAILROAD COMPANY,
RESPONDENT.

BRIEF FOR PETITIONER.

STATEMENT.

Application for Writ of Certiorari to the Supreme Court of [redacted] State of New York, to review a judgment of that Court entered in Erie County Clerk's Office on the 19th day of January 1920, reversing the judgments of the Trial Court for the sum of $18070.83, entered in the Erie County Clerk's office on the 13th day of June 1918, and of the Appellate Division of the Supreme Court, Fourth Department, affirming said judgment and for $30.40 costs, entered in the Erie County Clerk's office on the 8th day of March 1919.

The opinion of Hon. Charles B. Wheeler, Justice, Supreme Court, denying defendant's motion for a new trial is printed at page 92 of the record.

No opinion was written by the Appellate Division, C. J. Kruse, J. J. Lambert, D'Angelas and Foote read for affirmance; Foote, J., dissenting.

The opinion of the Court of Appeals written by Hon. William S. Andrews and concurred in by Hiscock, C. J. Collin, Hogan, McLaughlin, J. J. is printed at page 308 of the record.

From the opinion Crane and Chase J. J. dissented.

FACTS.

The facts are not in dispute. Plaintiff's intestate was employed as a trainman on a wayfreight train running east from Erie in the State of Pennsylvania to the City of Buffalo in the State of New York, and was killed Nov. 1, 1917, (Fol. 92) by being crushed between two cars because one of them was defective in that the automatic coupler was broken. Concededly defendant was engaged and intestate employed in interstate commerce at the time of the accident. At Silver Creek, an intermediate station, there was a car on a siding destined for Farnham, the next station east, which was to be taken from the siding in to the train at Silver Creek and carried on to its destination. On the siding at Silver Creek was another car, a box car which had arrived there two weeks before loaded with steel, consigned to the Hunter Manufacturing Company at Silver Creek. It was standing with several other cars on the siding, next to the car about to be taken onto the train and moved on to Farnham. This car was then partially unloaded. It was in good condition

when it reached its destination at Silver Creek and had been moved about on the siding while in the process of being unloaded, and also in moving other cars about and taking them on and off trains as they passed, and became out of order in thus being shifted about (Fols. 100, 107). In fact the same crew operating the train in question, together with intestate, had had occasion to move this car in carrying on the business of the defendant in taking cars on and leaving them off of trains at Silver Creek. The consignees had been unable to complete the unloading of the car, and it was on the siding while the unloading was proceeding. (Fols. 122, 123).

The draw bar, draft timber and the coupling apparatus on the westerly end of the car as it stood at the time of the accident were gone. This out of order condition was well known to defendant as well as to the crew of the wayfreight, including intestate, and had been the subject of comment by the crew. The car for Farnham was on what is known as the house track siding, and the defective car stood next east of it.

The train came into the station and stopped on Number 1 track. The natural and usual way of getting the Farnham car would have been for the engine to back on to the siding from the east and pull out the cars, including the out of order car and the Farnham car next west, but owing to the fact that the coupler of the out of order car was

broken down on the westerly end, the Farnham car could not be pulled out that way. So it was determined to detach the engine and move it by another siding to the westerly end of the switch upon which the Farnham and out of order car stood and pull the Farnham car therefrom to the west, and then by the necessary process of kicking and side-tracking (Fols. 132, 133) attach it to the train. In order to do this it was necessary to pull out five other cars which stood next to the west of the Farnham car on the same siding. Then of these six the Farnham car was put on the train, two left on another siding, and the remaining three were kicked back on to the siding from which they were taken, next to the out of order car. It was the customary and proper way, when thus leaving cars upon the siding, to couple them up, and except for the defective coupler these three would have been coupled to the defective car. This could not be done, however, because the coupler was gone. So when they were kicked back intestate climbed upon the end of the car farthest in to operate the brakes. This was the usual and proper thing to do. With proper equipment in the way of coupling, it would have been impossible for the car intestate was working on to come in close contact with the out of order car. There would have been a space of about two feet. But with the coupler off, the contact was complete. It was the duty of intestate to so operate the brakes, if he could, as to stop the three cars right next to the out of order car. In operating

the brakes intestate was compelled to stand upon a step at the end and somewhat below the top of the car. For some reason, presumably because he was unable to stop the three cars in time with the brakes, there was a complete and violent contact so that the leg of intestate was crushed, which resulted in his death.

More specific reference will be made to the evidence in discussing the following points:

POINT I.

The Court of Appeals of the State of New York has limited the benefits of the Safety Appliance Act to employees engaged in coupling or uncoupling, or handling cars. It has held there was no liability in a case where the total absence of a coupler on a car engaged in interstate commerce was the proximate cause of an injury. In this the court has disregarded the limitations which the Supreme Court has placed upon the decision in the Conarty case by the decisions in the Layton and Gotschall cases and thereby tended to throw the whole judicial construction of the Safety Appliance Act into confusion.

The true test of liability as laid down by the United States Supreme Court is whether or not the INJURY (not the collision) was proximately caused by a violation of the Safety Appliance Act.

The Court of Appeals erred in considering the collision as the test of liability inasmuch as the collision would have been the ordinary coupling contact, and harmless; but which became dangerous to life because of the absence of the coupler and the violation of the Safety Appliance Act.

This court said in the Layton case: 243 U. S. 617.

> "While it is, undoubtedly, true that the immediate occasion for passing the law requiring automatic couplers was the great number of deaths and injuries caused to employees who were obliged to go between cars to couple and uncouple them, yet these laws as written are by no means confined in their terms to the protection of employees only when so engaged. The language of the Acts, and the authorities we have cited, make it entirely clear that the liability in damages to employees for failure to comply with the law *springs from its being made unlawful to use cars not equipped as required—not from the position the employee may be in, or the work which he may be doing at the moment when he is injured.* This effect can be given to the acts, and their wise and humane purpose can be accomplished only by holding, as we do, *that carriers are liable to employees in damages whenever the failure to obey these Safety Appliance Laws is the proxi-*

mate cause of injury to them when engaged in the discharge of duty."

Judge Andrews says in the Lang case:

> "The Supreme Court said that Section 2 of the Act was intended to provide against the risk of coupling and uncoupling and to obviate the necessity of men going between the ends of the cars. *It was not intended to provide a place of safety between colliding cars.* Therefore, when a collision was not the proximate result of the violation of these regulations, where there was no endeavor to couple or uncouple a car or to handle it in any way, there can be no recovery under the act. The absence of a coupler and drawbar was not a breach of duty toward a servant in that situation."

It would seem that the words quoted "not intended to provide a place of safety between colliding cars" is a decided limitation on the broad purpose which the United States Supreme Court attributes to the acts in the Layton case.

Judge Andrews further says:

> "It was plain that had the coupler and draw-bar been present, the two cars would have been held so far apart that he would have escaped uninjured,"

or, in other words, that the defective coupler was a proximate cause of the injury.

The plaintiff's intestate was engaged in the discharge of his duty at the time. This duty involved the moving of cars, and the very movement in which he was engaged, and which resulted in his death, was on account of the defective coupler (Fols. 76, 142). The car with the defective coupler was not withdrawn from business but was in use at the time of the accident and had been for several days previous thereto (Fols. 112-13-20-23; 142-3).

The Court of Appeals makes the test of liability the proximate cause of the *collision*. This, we respectfully submit, is not the test. The cause of action arises out of the *injury* and not out of the *collision*. The true test is whether or not the the defective coupler was the proximate cause of the *injury*. The statute, which provides,

> "It shall be unlawful for any such common carrier to haul, or permit to be hauled, or used, on its line any car used for moving interstate traffic not equipped with couplers coupling automatically by impact, etc."

has been violated. That this violation was a proximate cause of the *injury* has been held as a matter of law in this case. Any other test, viz., whether the violation of the statute was the proximate cause of the car movements or the plaintiff's movements, does not meet the test laid down in the Layton case, viz.:

> "Carriers are liable to employees in damages whenever the failure to obey these Safe-

ty Appliance laws is the proximate cause of injury to them when engaged in the discharge of duty."

But, even if we adopt the views of the Court of Appeals that the test of the applicability of the Safety Appliance Act is to be determined by whether or not the defective coupler was the proximate cause of the collision, of course, there were several collisions involved in the movement. The first occurred when the engine kicked the car in which the plaintiff's intestate was riding in on the side track. This was harmless. Had the coupler been in place there would have been a second harmless collision between the couplers of the two cars. The absence of the coupler permitted a different sort of collision, viz., a collision between the ends of the cars that were not intended to come together, and which resulted in the injury.

This is the only collision that the action revolves itself around, and certainly this collision was caused by the absence of the coupler. But, be this as it may, we respectfully submit that where a violation of the Safety Appliance Act is established, and that violation is a proximate cause of an *injury* to an employee in the discharge of his duty, liability is established. If the Court of Appeals had the right to construe the statute in the light of the Conarty case alone, where the Supreme Court said:

> "The risk in coupling and uncoupling was the evil sought to be remedied,"

and again,

> "Nothing in either provision gives any warrant for saying that they are intended to provide a place of safety between colliding cars. On the contrary, they affirmatively show that the principal purpose in their enactment was to obviate the necessity of men going between the ends of the cars,"

then it might be held that as the deceased was not coupling or uncoupling, or going between the cars for that purpose, the Act was not applicable. But the Supreme Court, evidently anticipating that such a narrow construction might be put on the Conarty case, has expressly determined in the Layton case that the responsibility is not determined

> "from the position the employee may be in or the work which he may be doing at the moment when he is injured,"

and, unfortunately, that seems to be the test applied to the deceased by the Court of Appeals, and when the court says that couplers were not required so that they might act as bumpers, it indicates an indisposition to apply the simple rule of the Layton case, viz., was there a violation, and was such violation the proximate cause of the injury?

Should it be necessary to further distinguish this case from the Conarty case, attention is respectfully invited to the following:

In the Conarty case, Judge VanDeventer has pointed out, first:

> "The deceased and his co-employees with the switch engine were on their way to do some switching at a point some distance beyond the car, and were not intending and did not intend to couple it to the engine or handle it in any way. This movement was in the hands of others."

In the case at bar the very movement in which the plaintiff's intestate met his death was required by reason of his inability to handle the defective car in the usual way because of the defect.

Again, Judge VanDeventer says:

> "We are of the opinion that the deceased, who was not endeavoring to couple or uncouple the car, or handle it in any way, but was riding on the colliding engine, was not in a situation where the absence of the prescribed coupler and draw-bar operated as a breach of duty imposed for his benefit."

But, as was pointed out, the deceased here was charged with the duty of placing the car on which he was riding as close to the defective car as possible (Fols. 76, 142) and was making the movement in a different manner than usual because of the defective car, and at the very time of the accident was required to be at a point of danger to prevent a collision with the defective car, which would be

damaging to property because of the defect and which would have been harmless without it. (Fols. 181-188-189).

Since the Supreme Court has written in the *Layton* and *Gotschall* cases, employees who are not engaged in coupling or uncoupling, or handling defective cars in any way are under the protection of the Act.

Plaintiff has the benefit of both the Safety Appliance and Federal Employers' Liability Acts. (San Antonio &c. R. Co. v. Wagner, 241 U. S., 476. 36 S. C. R., 626).

It is well settled that if the defective coupling contributed in *whole or in part* to the death of intestate, that is sufficient to establish absolute liability under the Safety Appliance Act, and neither contributory negligence nor assumption of risks can avail defendant as a defense, or in diminishing the damages.

Union Pacific R. R. Co. vs. Huxoll, (245 *U. S.,* 535; 38 *S. C. R.,* 187).

As said in the *Wagner case,* (241 *U. S.,* 476; 36 *S. C. R.,* 626):

> "If this Act is violated, the question of negligence in the general sense, or want of care, is immaterial."

And in the

Parker case, (242 *U. S.,* 56; 37 *S. C. R.,* 69):

"If there was evidence that the railroad failed to furnish such couplers, coupling automatically by impact, as the statute requires, nothing else need be considered."

See also

Layton case, 243 *U. S.*, 617; (37 *S. C. R.*, 456).

Otos case, 239 *U. S.*, 349; (36 *S. C. R.*, 124).

Rigsby case, 241 *U. S.*, 33; (33 *S. C. R.*, 482).

Delk v. St. Louis S. F. R. Co., 220 *U. S.*, 580; (31 *S. C. R.*, 617).

In

Spokane, etc., vs. Campbell, (217 *Fed.*, 524).

the Court said, in speaking of the Act:

"The effect of this statute is to eliminate the element of proximate cause where the concurrent acts of the employer and employee contribute as a cause for the injury or death of the employee, especially where the contributing act of the employer was in derogation of a duty imposed under the Act for the safety of the employee."

This is judicially declared in

Grand Trunk Western Ry. Co. v. Lindsay, (233 *U. S.*, 42; 34 *S. C. R.*, 581).

If, therefore, violation of this Act was a concurring cause, that ends the case so far as defendant's liability is concerned, and no negligence on

the part of intestate. (Section 3, Federal Employers' Liability Act; Great Northern Ry. Co. v. Otos, 239 U. S., 349; 36 U. S., Sup. Ct. Rep., Grand Trunk & Western R. Co. v. Lindsay, 233 U. S., 42, 34 S. C. R, 581; Delk v. St. L. S. F. R. Co., 220 U. S., 580, 31 Sup. Ct. Rep., 617), or assumption of any risk on his part, (Section 4, Employers' Liability Act; Section 8, Safety Appliance Act; Texas & Pacific Ry. Co. v. Rigsby, 241 U. S., 33; 36 Sup. Ct. Rep., 480, Schlemmer v. B. R. & B. Ry. Co., 220 U. S., 590, 31 S. C. R., 561), or any negligence on the part of defendant, or any employee of defendant (Texas & Pacific Ry. Co. v. Rigsby, *supra;* Delk v. Ry. Co., *supra;* C. B. & Q. R. Co. v. U. S., 220 U. S., 559; 31 Sup. Ct. Rep., 612; St. L. S. T. L. I. M. & S. R. Co. v. Taylor, 210 U. S., 281, 28 S. C. R., 616, can in any way avert or affect the liability of defendant or the amount of damages. If the act governs the case, the liability, by force of it, is absolute.

There is no contention here, but that the breaking down of the coupler on the out of order car in question was at least a concurring cause of intestate's death. It is undisputed that if the statutory coupler had been on this car in working order, the car upon which intestate was engaged in operating the brakes, would, when it was kicked against it have coupled automatically and been held apart for a distance of at least two feet by the automatic coupler, which would have prevented the accident, but that the absence of the automatic coupler permitted a complete contact, thus

crushing intestate's leg and causing his death. (Fols. 135, 162-165, 167-169, 171).

These actions for violations of the Safety Appliance Act are generally brought in the State Courts. Many such actions are brought in the State of New York. This State is within the Second Judicial Circuit.

It is respectfully submitted that the decision in the Lang case is not only in flat contradiction of the principles laid down in the Layton case and the Gotschall case, but is specifically in conflict with the case of

Erie v. Russell, 183 Fed. Reporter, 724 (Second Circuit).

In this case plaintiff was repairing a defective coupler. One of the other cars were pushed into the car having the defective coupler, which resulted in injury to the plaintiff. The plaintiff was not engaged in coupling, or uncoupling, or in handling the car in any way, except that he was repairing the defective coupler. The court said:

> "The second question of importance in the case is whether the Trial Court properly submitted to the jury the question whether the presence of the defective coupler was a proximate cause of the accident. It is urged with much force that that which caused the injury to the plaintiff's intestate was the unexpected movement of the three cars—an act unrelated to, and independent of, the act of re-

pairing the coupler. Indeed, were the question to be decided free of authority, a majority of the court would have difficulty in holding that the repair of the coupler was a part of a coupling operation, and bore such a relation to the impact of the cars that the necessity for such repairs was an efficient cause of the accident. But still the reason why Russell went to the place where he was injured was the defective coupler, and if he had not gone there the accident would not have occurred."

In the Sixth Circuit in the case of

Erie R. Co. v. Schleenbaker, 257 Fed., 667, the court has gone even further. The defective car was placed at the back end of a train, and because of this the lights were removed from the caboose to the rear end of the defective car. The removal of these lights caused the conductor of the train to lose his footing and receive the injuries complained of. The court affirmed a judgment for the plaintiff which determined that the defective coupler was the proximate cause of the conditions which followed.

It would, therefore, appear that if a plaintiff brings an action in the Federal Court in the State of New York, the rule of the Russell case will apply. If he brings the action in the State Court, the rule of the Lang case will apply. It is unseemly that there should be a different construction of a Federal statute by the State and Federal

Courts in the same jurisdiction which construction leads to precisely opposite results in the adjustment of the rights of the parties.

POINT II.

The Court of Appeals was in error in dismissing plaintiff's complaint but should have directed a new trial.

This action having been brought under both the Employers' Liability Act and the Safety Appliance Act, it was error for the Court of Appeals to dismiss plaintiff's complaint but a new trial ought to have been granted in order that plaintiff might have an opportunity to prove her cause of action under the Employers' Liability Act.

Furthermore the Court of Appeals erred in dismissing plaintiff's complaint for the further reason that the question of proximate cause was one for the jury to determine and a new trial ought to have been granted instead.

Erie R. R. Co. v. Russell, 183 Fed., 722.
Donegan v. Baltimore & N. Y. R. Co., 165 Fed., 869.

POINT III.

It is respectfully submitted that the petition for writ of certiorari should be granted.

HAMILTON WARD,
Counsel for Petitioner.